



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in the Privacy of Consumer Financial Information Rule (Privacy Rule or Rule). That clearance expires on October 31, 2017.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write "Privacy Rule: Paperwork Comment: FTC File No. P085405" on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/glbfinancialrulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the

following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to David Lincicum, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Drop Box 8232, Washington, DC 20580, (202) 326-2773.

SUPPLEMENTARY INFORMATION:

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)¹ substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies, including the FTC, to the Bureau of Consumer Financial Protection (CFPB) as of July 21, 2011. This transfer to the CFPB included most provisions of Subtitle A of Title V of the GrammLeach-Bliley Act (GLB Act), with respect to financial institutions described in section 504 of the GLB Act. Pursuant to the GLB Act, only the FTC retains rulemaking authority for its Privacy Rule, 16 CFR 313, for motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.² The CFPB implemented its own regulations to enforce the Dodd-Frank provisions, including Privacy of Consumer Financial Information (Regulation P), 12 CFR 1016.³

¹ Public Law 111-203, 124 Stat. 1376 (2010).

² See Dodd-Frank Act, at section 1029(a), (c).

³ See 76 FR 79025 (Dec. 21, 2011); Privacy of Consumer Financial Information (Regulation P), 12 CFR

Contemporaneous with that issuance, the CFPB and FTC each had submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction. The FTC supplemented its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. Following the preliminary background information, the discussion in the Burden Statement below continues that analytical framework with appropriate updates or other revisions for instant purposes.

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require.

"Collection of information" means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with Commission's Financial Privacy Rule, 16 CFR 313 (OMB Control Number 3084-0121).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are

to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

The Privacy Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLB1 Act (GLBA), 15 U.S.C. 6801-6809, the Rule requires financial institutions to disclose to consumers: (1) initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer;⁴ and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping. For PRA burden calculations the FTC has attributed to itself the burden for all motor vehicle dealers that do not routinely extend credit to consumers directly without assigning the credit to unaffiliated third parties (hereafter, motor vehicle dealers), and then shares equally the remaining PRA burden with the CFPB for other types of financial institutions over which both agencies have enforcement authority. *See* 12 U.S.C. 5519.

⁴ On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment, titled Eliminate Privacy Notice Confusion (FAST Act, Public Law 114094, section 75001) added new GLBA section 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. Section 503(f) requires that to qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions, under which sharing does not trigger a customer's statutory right to opt out of the sharing. In addition, section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice the customer received.

Privacy Rule Burden Statement:

Estimated annual hours burden: 1,725,600 annual hours (FTC portion)

As noted in previous burden estimates for the Privacy Rule, determining the PRA burden of the Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a Federal financial regulatory agency. *See* 15 U.S.C. 6805 (committing to the Commission's jurisdiction entities that are not specifically subject to another agency's jurisdiction).

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the Privacy Rule. In addition, some entities may use highly automated means to provide the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time that may be necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Staff estimates that the number of entities each year that will address the Privacy Rule for the first time will be 5,000 and the number of established entities already familiar with the Rule will be 100,000. While the number of established entities familiar with the Rule would theoretically increase each year with the addition of new entrants, staff retains its estimate of

established entities for each successive year given that a number of the established entities will close in any given year, and also given the difficulty of establishing a more precise estimate.

Staff believes that the usage of the model privacy form and the availability of the form builder simplify and automate much of the work associated with creating the disclosure documents for new entrants. Staff thus estimates 1 hour of clerical time and 2 hours of professional/technical time per new entrant.

For established entities, staff similarly believes that the usage of the model privacy form and the availability of the Online Form Builder reduces the time associated with the modification of the notices. Staff thus estimates 7 hours of clerical time and 3 hours of professional/technical time per respondent. Staff estimates that no more than 1% of the estimated 100,000 established-entity respondents would make additional changes to privacy policies at any time other than the occasion of the annual notice. Furthermore, under Section 503(f), businesses who have not changed their privacy notice since the last notice sent and who do not share information with non-affiliated third parties outside of certain statutory exceptions do not have to issue annual notices to their customers. Staff estimates that at least 80% of businesses covered by the rule will, accordingly, not be required to issue annual notices.

The complete burden estimates for new entrants and established entities are detailed in the charts below.

Start-up hours and labor costs for all new entrants (Table IA):

Event	Hourly wage and labor category*	Hours per respondent	Approx. number of respondents	Approx. total annual hrs.	Approx. total labor costs
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Reviewing internal policies and developing GLBA-implementing instructions **.	\$42.76 Professional/Technical	20	5,000	100,000	\$4,276,000
Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	\$17.91 Clerical.....	1	5,000	5,000	\$89,550
	\$42.76 Professional/Technical.....	2	5,000	10,000	\$427,600
Disseminating initial disclosure (including opt out notices).	\$17.91 Clerical	15	5,000	75,000	\$1,343,250
	\$42.76 Professional/Technical.....	10	5,000	50,000	\$2,138,000
Total .....	.....	.....	.....	240,000	\$8,274,400

*Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for Financial Examiners and for Office and Administrative Support, corresponding to professional/technical time (e.g., compliance evaluation and/or planning, designing and producing notices, reviewing and updating information systems), and clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing) respectively. See BLS Occupational Employment and Wages, May 2016, Table 1 at <http://www.bls.gov/news.release/pdf/ocwage.pdf>. Labor cost totals reflect solely that of the commercial entities affected. Staff estimates that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

**Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of documents and/or electronic disclosures).

Burden hours and costs for all established entities (Table IB):

Burden for established entities already familiar with the Rule predictably would be less than for start-up entities because start-up costs, such as crafting a privacy policy, are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Hourly wage and labor category*	Hours per respondent	Approx. number of respondents**	Approx. total annual hrs.	Approx. total labor costs
Reviewing GLBA-implementing policies and practices.	\$42.76 Professional/Technical	4	100,000	400,000	\$17,104,000
Disseminating initial notices to new customers	\$17.91 Clerical	15	100,000	1,500,000	\$26,865,000
Disseminating annual disclosures to pre-existing customers	\$17.91 Clerical	15		210,000	\$3,761,100
	\$42.76 Professional/Technical	5	14,000	70,000	\$2,993,200
Changes to privacy policies and related disclosures.	\$17.91 Clerical	7	14,000	7,000	\$125,370
	\$42.76 Professional/Technical	3	1,000	3,000	\$128,280

Total	2,190,000	\$50,976,950
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*Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for Financial Examiners and for Office and Administrative Support, corresponding to professional/technical time (e.g., compliance evaluation and/or planning, designing and producing notices, reviewing and updating information systems), and clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing) respectively. See BLS Occupational Employment and Wages, May 2016, Table 1 at <http://www.bls.gov/news.release/pdf/ocwage.pdf>. Labor cost totals reflect solely that of the affected commercial entities. Consumers have a continuing right to opt out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

**The estimate of respondents which are required to disseminate annual notices is based on the following assumptions: (1) 100,000 established respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 20% (14,000) of whom have made changes to their policies and share nonpublic information outside of the statutory exceptions, and therefore are required to provide annual notices under GLBA 503(f). See CFPB, Proposed Rule, 81 FR 44801, 44809 (July 11, 2016); (3) and no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (4) such changes will occur no more often than once per year.

As calculated above, the total annual PRA burden hours and labor costs for all affected entities in a given year would be 2,430,000 hours and \$59,251,350, respectively.

The FTC now carves out from these overall figures the burden hours and labor costs associated with motor vehicle dealers. This is because the CFPB does not enforce the Privacy Rule for those types of entities. We estimate the following:

Annual start-up hours and labor costs for new motor vehicle dealer entrants only
(Table IIA):

Event	Hourly wage and labor category	Hours per respondent	Approx. number of respondents (Table IA inputs x 0.42)	Approx. total annual hrs.	Approx. total labor costs
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Reviewing internal policies and developing GLBA-implementing instructions **.	\$42.76 Professional/Technical.....	20	2,100	42,000	\$1,795,920
Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	\$17.91 Clerical	1	2,100	2,100	\$37,611
	\$42.76 Professional/Technical	2	2,100	4,200	\$179,592
Disseminating initial disclosure (including opt out notices).	\$17.91 Clerical	15	2,100	31,500	\$564,165
	\$42.76 Professional/Technical.....	10	2,100	21,000	\$897,960
Total .....	.....	.....	.....	100,800	\$3,475,248

**Multiply the number of respondents from the comparable table above on all new entrants by the following allocation (43,708/105,000) = 0.42. The number in the denominator represents the total of the FTC's existing Privacy Rule estimates for new entrants (5,000) and established entities (100,000). The numerator represents an estimate of motor vehicle respondents. For this category, Commission staff relied on the following industry estimates: 16,708 new car dealers per [National Automobile Dealers Association](#) data (2016) and 12,000 independent/used car dealers who do not extend credit directly to consumers without routinely assigning the credit to third-parties per [National Independent Automobile Dealers Association](#) data (2012), respectively, in addition to 15,000 dealers of other motor vehicles (motorcycles, boats, other recreational vehicles) per the 2012 economic census, which are also covered within the definition of "motor vehicle dealer" under section 1029(a) of the Dodd-Frank Act.

Annual burden hours and labor costs for established motor vehicle dealers only

(Table IIB):

Event	Hourly wage and labor category*	Hours per respondent	Approx. number of respondents** * (Table IB inputs x 0.42)	Approx. total annual hrs.	Approx. total labor costs
Reviewing GLBA-implementing policies and practices.	\$42.76 Professional/Technical	4	42,000	168,600	\$7,209,336
Disseminating initial notices to new customers	\$17.91 Clerical	15	42,000	630,000	\$11,283,300
Disseminating annual disclosures to pre-existing customers	\$17.91 Clerical	15	5,880	88,200	\$1,579,662
	\$42.76 Professional/Technical	5	5,880	29,400	\$1,257,144
Changes to privacy policies and related disclosures.	\$17.91 Clerical	7	420	2,940	\$52,655
	\$42.76 Professional/Technical	3	420	1,260	\$53,878
Total .....	.....	.....	.....	920,400	\$21,435,975

The FTC's portion of the annual hourly burden would be $1,021,200 + ((2,430,000 - 1,021,200) / 2) = 1,725,600$ annual hours. The FTC's portion of the annual cost burden would be $\$24,911,223 + \$((59,251,350 - 24,911,223) / 2) = \$42,081,287$.

Estimated Capital/Other Non-Labor Costs Burden:

Staff believes that capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.*, computers with word processing programs, copying machines, mailing capabilities). Most likely, only entities that already have online capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

Request for Comments

You can file a comment online or on paper. Write "Privacy Rule: Paperwork Comment: FTC File No. P085405" on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/glbfinancialrulepra> by following the instructions on the

web based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Privacy Rule: Paperwork Comment: FTC File No. P085405” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue N.W., Suite CC-5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at www.ftc.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c).

Visit the Commission Website at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka,
Principal Deputy General Counsel.

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